IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.765 OF 2005

Raymond Joseph Clinch ...Applicant

Versus

The Principal Secretary & Anr. ...Respondents

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Mr.Uday Warunjikar for Applicant.

Mr.K.V.Saste, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2005.

P.C.

1. Heard Counsel for the parties.

2. In all, four questions have been raised before me. The first point argued is that the impugned order is ex-parte. Grievance is made that when the matter was remanded, the Authority was expected to give notice about hearing of the Appeal to the Petitioner. Instead, the Authority has given such notice to the Advocate on record of the

Petitioner, who had appeared before this Court in the earlier round of litigation. This submission clearly overlooks the fact stated in the impugned order that the Appeal was posted for hearing on 18th January 2005, which was adjourned to 25th January 2005. On 25th January 2005, one Advocate Mr.P.S.More appeared before the Authority and prayed for time to file written submissions and further documents. That request was acceded to. However, thereafter, neither Mr.More appeared, nor teh Petitioner made necessary arrangement to espouse his cause before the Authority and in that circumstance, the Appellate Authority proceeded in the matter. The Appellate Authority has also adverted to the communication sent by Mr.Warunjikar that notice ought to be given to the Petitioner directly. As mentioned earlier, as some Advocate had appeared before the Appellate Authority on 25th January 2005 and prayed for adjournment, which request was acceded to, it presupposes that the Petitioner had notice about the hearing of the case and was expected to take necessary steps to pursue the necessary remedy as may be available to him in law. That has not been done. In that sense, it is

not the ex-parte order passed against the Petitioner.

3. Besides, what is interesting to note is that in the entire Writ Petition filed before this Court, there is not even the slightest of suggestion that Mr.More, Advocate had no authority to appear before the Appellate Authority on behalf of the Petitioner. If it is so, there is no cause for making grievance that the order as passed by the Appellate Authority is ex-parte, against the Petitioner. This submission is therefore, misconceived.

4. At this stage, Mr.Warunjikar submits that the Petitioner be permitted to amend the Writ Petition so as to place on record that said Mr.P.S.More, Advocate, had no authority to act or appear on behalf of the Petitioner before the Appellate Authority. If this was the stand to be taken by the Petitioner, that would have found place in the original Writ Petition as filed before this Court. Giving permission to amend the Writ Petition is allowing the Petitioner to take a

ground which is obviously an afterthought. In this view of the matter, I find no substance in the vehement request made by Mr.Warunjikar for liberty to amend the Petition. The same is rejected.

5. The second contention raised before this Court is that the order of externment is excessive. The argument is that the show-cause notice refers to area of operation of the Petitioner confined to two Police Stations, whereas, the Petitioner has been directed to be externed from the entire District of Pune and Pune City.

6. In my opinion, the nature of order passed by the Externing Authority as has been affirmed by the Appellate Authority with regard to the area of externment of the Petitioner, needs no interference. By no stretch of imagination, such an order can be said to be excessive because although the activities of the Petitioner are focussed within the jurisdiction of two Police Stations in the District of Pune, but having regard to the commercial activities throughout District Pune, in view of the principles underlying the

decision of the Apex Court in the case of **Pandharinath Shridhar Rangnekar vs. Dy.Commissioner of Police, State of Maharashtra reported in AIR 1973 SC 630**, the argument that the order is excessive, cannot be countenanced. That argument should therefore fail.

7. The third contention raised before this Court is that the Appellate Authority has cursorily considered the evidence adduced by the Petitioner in his defence. No detail examination of the evidence has been done. Besides, the ground on which the evidence has been discarded, cannot be sustained. This submission once again overlooks the observations made by the Apex Court in **Pandharinath's case (supra)** that the Externing Authority is not expected to give elaborate reasons. The manner in which the evidence adduced by the Petitioner has been examined in Paragraphs 4 and 5 of the decision in question, in my opinion, is sufficient compliance of the requirement as was contemplated in the order passed by this Court on the earlier occasion.

8. There is no infirmity in the approach of the Appellate Authority. The view taken by the Appellate Authority on appreciation of evidence on record, is a possible view and if it is so, it is not open for this Court to interfere in exercise of writ jurisdiction, so as to sit over the subjective satisfaction reached by the Externing Officer as Appellate Court. That is not the scope of judicial review in the matter which I am called upon to examine. Hence, there is no substance even in this contention.

9. The last argument canvassed on behalf of the Petitioner is that the order of externment is passed as back as in October 2003 and the Petitioner has already removed himself from the relevant area since then. In other words, the Petitioner has already suffered the period of two years stipulated under the externment order substantially, for which reason, this Court may order that the period already undergone by the Petitioner is sufficient to meet the fact situation of the present case. This submission once again overlooks the limited scope of judicial review

available in the High Court against the orders passed by the Authorities in exercise of powers under the provisions of the Bombay Police Act. It is not open for this Court to substitute the period which has been ordered by the Authority on reaching subjective satisfaction about the imperativeness of that period.

10. Viewed in this perspective, merely because the Petitioner has substantially undergone the period of externment, cannot be the basis to observe that the period already undergone would meet the ends of justice. That course is not open for this Court. As no other contentions are raised, dismissed.

A.M.KHANWILKAR, J.